



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 25, 1997

Mr. Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR97-0424

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37413.

The City of Coppel (the "city"), which you represent, received two similar requests for information related to the complaint filed by Doyle Calfey on June 23, 1995. You contend that the requested information, which you have submitted to this office for review, is excepted from disclosure under section 552.108 of the Government Code.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The city received the first request for information on July 21, 1995. However, you did not request a decision from this office until November 28, 1995, more than ten days after the city received the request. We note that section 552.108 is a discretionary exception that a governmental body waives by its failure to timely request a decision from this office. See Open Records Decision No. 216 (1978). Therefore, the city must release all requested information that was in existence before it received the July 21, 1995 request, unless that information is

confidential by law or other compelling reasons exist as to why the information should not be made public.

The city received the second request for information on December 21, 1995 and you timely forwarded that request to this office. Therefore, we will consider your section 552.108 claim as it relates to information created after the city received the July 21, 1995 request.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.<sup>1</sup> *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information and the information that was in existence before the city received the July 21, 1995 request, section 552.108 of the Government Code excepts the submitted information from required public disclosure. On the other hand, the city may choose to release all or part of the excepted information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 37413

Enclosures: Submitted documents

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<sup>1</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

cc: Mr. Doyle Calfey  
449 Harris C-103  
Coppell, Texas 75019  
(w/o enclosures)